

**BEFORE THE COMMISSIONER OF THE
TENNESSEE DEPARTMENT OF SAFETY**

IN THE MATTER OF:)	
)	
TENNESSEE DEPARTMENT)	
OF SAFETY)	DOCKET NO. 19.01-104867J
)	D.O.S. Case No. J5025
v.)	
)	
One 2004 JEEP LIBERTY)	
VIN No. ?)	
&)	
ONE HUNDRED THIRTY-FIVE)	
THOUSAND, FIVE HUNDRED AND)	
FOUR DOLLARS (\$135,504.00)¹)	
In U.S. CURRENCY)	
SEIZURE DATE: June 11, 2009)	
SEIZED FROM: Gregory Harris)	
CLAIMANT: Gregory Harris)	
LIENHOLDER: Unknown Whether)	
Applicable)	

¹ Claimant contends that One Hundred Fifty-Two Thousand, Five Hundred and Four (\$152,504.00) is the amount of U.S. Currency seized.

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INITIAL ORDER;
NOTICE OF DEFAULT

This matter commenced on June 11, 2009, when the subject vehicle and U.S. Currency was seized. In October 2009, the State moved for in-person argument on standing. Subsequently, oral argument was also requested on the Claimant's motion to suppress.

Oral argument on standing was set for April 26, 2010 in Chattanooga, Tennessee, before Mattielyn B. Williams, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, and sitting for the Commissioner of the Tennessee Department of Safety. Attorney G. Scott Kanavos is representing Claimant Gregory Harris in this matter. Attorney Nina Harris, Tennessee Department of Safety, was representing the State in April 2010.

On April 22, 2010, the State advised that both parties agreed that such argument should be continued, based upon the Claimant's recent propounding of discovery. By Order of April 23, 2010, the Undersigned offered to hear the motions by telephone conference call and ordered that the State re-set this matter for hearing on the merits.

In mid-August 2010, Attorney Will Lundy became Substitute Counsel for the State.

Oral argument on the State's Motion for Hearing on Standing had not been re-set and argument on Claimant's Motion to Suppress had not been set as of August 26, 2010. The Undersigned issued an Order on August 26, 2010, with regard to scheduling or re-scheduling argument on these and other matters, with the parties' responses due by September 3, 2010. Claimant timely responded on September 3, 2010.

As of November 10, 2010, more than two (2) months later, the State had yet to respond. Therefore, an Order was issued on November 12, 2010, indicating that this matter seems ripe for default and dismissal with return of property to Claimant if no response is filed by the State by December 13, 2010.

As of December 23, 2010, no response has been voiced or filed by the State. Actually, no communication has been received from the State since mid-August when Attorney Nina Harris stopped serving as Counsel for the State and advised that Attorney Will Lundy was now substitute counsel.

In light of significant delay and lack of communication from the State, it is hereby **DETERMINED** that the State has had adequate time to participate in setting the arguments on motions, to argue the various motions, and to re-set this matter for hearing on the merits, yet has declined to do so for months. Further, it is **NOTED** that the State was put on notice, through the Order of November 12, 2010, that default for its failure to participate was under consideration.

Therefore, pursuant to T.C.A. 4-5-309, the Claimant's Motion to hold the State in Default is hereby **GRANTED**.

NOTICE OF DEFAULT

NOTICE IS HEREBY GIVEN THE STATE AGENCY THAT THE AGENCY HAS BEEN HELD IN DEFAULT FOR THE AGENCY'S FAILURE TO PARTICIPATE IN THE PROCESS OF BRINGING THIS MATTER TO HEARING OR APPEAR AT A HEARING ON THE MERITS AFTER RECEIVING ADEQUATE NOTICE. T.C.A. §4-5-309. THE AGENCY HAS FIFTEEN (15) DAYS FROM THE EFFECTIVE DATE OF THIS ORDER TO REQUEST THAT THIS FINDING OF DEFAULT BE SET ASIDE. THIS REQUEST MUST BE RECEIVED IN THE OFFICE OF THE SECRETARY OF STATE, ADMINISTRATIVE PROCEDURES DIVISION, SUITE 800, WILLIAM R. SNODGRASS BUILDING, 312 EIGHTH AVENUE NORTH NASHVILLE, TENNESSEE 37243, WITHIN THAT 15-DAY PERIOD. THE REQUEST TO HAVE THE FINDING OF DEFAULT SET ASIDE SHOULD INCLUDE THE REASONS TO JUSTIFY THE AGENCY'S FAILURE TO ATTEND/PARTICIPATE. IF SUFFICIENT REASONS ARE GIVEN, THE ORDER MAY BE SET ASIDE AND A NEW HEARING SCHEDULED. IF THE AGENCY DOES NOT REQUEST THE DEFAULT TO BE SET ASIDE OR OTHERWISE APPEAL THE ACCOMPANYING INITIAL ORDER, THEN THE INITIAL ORDER WILL BECOME A FINAL ORDER SUBJECT TO COURT REVIEW. ANY QUESTIONS REGARDING THIS NOTICE OF DEFAULT OR THE STEPS

NECESSARY TO HAVE IT SET ASIDE SHOULD BE SUBMITTED TO THE ADMINISTRATIVE JUDGE SIGNING THIS ORDER BY LETTER OR BY TELEPHONING (615) 741-4469.

Should good cause exist for the State's failure to appear/participate, the State may move to have the Default Set Aside within fifteen (15) days.

ORDER

The Tennessee Department of Safety bears the burden of proof in this matter. The Claimant moved to dismiss this matter on the basis that the State has failed to come forward and meet its burden of proof by presenting evidence as to why forfeiture is proper. In the absence of such proof, the Claimant's property should be returned to Claimant.

The Claimant's motion to dismiss this matter is **GRANTED**.

With the Motion to Dismiss having been granted, it is hereby **ORDERED** that the subject 2004 Jeep Liberty and One Hundred Thirty-Five Thousand Five Hundred and Four Dollars² (\$135,504.00) **BE RETURNED TO CLAIMANT** Gregory Harris.

² Claimant contends that One Hundred Fifty-Two Thousand, Five Hundred and Four (\$152,504.00) is the amount of U.S. Currency seized.

It is unclear whether or not there is a Lienholder who has filed to protect their interest in the subject vehicle. However, since the subject vehicle is being returned to the Claimant, the Lienholder's interest in the subject vehicle, if any, is undisturbed.

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This Initial Order entered and effective this 28th day of December, 2010.

Mattielyn B. Williams

Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State
this 28th day of December, 2010.

Thomas G. Stovall, Director

Administrative Procedures Division